

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
Houston Division

METRO HOSPITALITY PARTNERS LTD	§	
d/b/a CROWNE PLAZA HOTEL,	§	
Plaintiff,	§	
	§	Civil Action
VS.	§	No. 11-cv-3569
	§	
LEXINGTON INSURANCE COMPANY,	§	
Defendant.	§	

**LEXINGTON INSURANCE COMPANY'S**  
**NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Lexington Insurance Company, ("Defendant") hereby files this notice of removal of this action to the United States District Court for the Southern District of Texas.

1. On or about September 7, 2011, Plaintiff, METRO HOSPITALITY PARTNERS LTD D/B/A CROWNE PLAZA HOTEL ("Plaintiff"), commenced an action against Defendant in the District Court of Harris County, Texas. That action bears the same title as the above caption and is docketed as Case No. 2011 53462 (the "State Court Action").

**TIMELY REMOVAL**

2. On or about September 12, 2011, Defendant was served with a copy of the Petition. This Notice of Removal is being filed within thirty days after Defendant was served with a copy of the Petition; therefore, it is timely filed pursuant to 28 U.S.C. § 1446(b).

### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction over the claims set forth in the Petition pursuant to 28 U.S.C. § 1332(a)(1) and this action is removable from the District Court of Harris County, Texas, to the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. § 1441(a).

5. Venue is proper in this Court and division pursuant to 28 U.S.C. § 1391(a).

6. This action is not a non-removable action as described in 28 U.S.C. § 1445.

### **NOTICE**

8. Pursuant to 28 U.S.C. § 1446(a), attached hereto as **Exhibit “A”** are (i) an index of all documents filed in the State Court Action, (ii) a copy of the docket sheet in the State Court Action, and (iii) a copy of the true and correct copies of all process, pleadings, and orders in the State Court Action on file with the Clerk of the District Court of Harris County, Texas, and served on Defendant, if applicable.

9. Promptly after the filing of this Notice, Defendant will serve written notice of this removal to Plaintiff through its counsel and will file a copy of this Notice with the District Court of Harris County, Texas as required by 28 U.S.C. § 1446(b) in the form attached hereto as **Exhibit “B.”**

### **DIVERSITY JURISDICTION**

10. This case is removable under 28 U.S.C. § 1441(a) because this United States District Court has original jurisdiction of this case pursuant to 28 U.S.C. § 1332(a).

11. Section 1332(a) provides, in relevant part, that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 . . . and is between . . . citizens of different states.”

12. Plaintiff is a Texas domestic limited partnership operating a hotel in Harris County, Texas.

13. Defendant was, at the time of the filing of this action, and still is, an insurance company incorporated in Delaware which has its principal place of business in the State of Massachusetts, making Defendant a diverse party.

14. Under 28 U.S.C. § 1332, the parties are therefore diverse.

15. Plaintiff asserts claims relating to its alleged damages involving a mechanical breakdown of equipment.

16. In determining the amount in controversy, the court may consider “policy limits... penalties, statutory damages, and punitive damages.” *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5<sup>th</sup> Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at \*2-3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff’s case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int’l Co.*, 75 F. Supp. 2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exch.*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

17. Despite Plaintiff’s failure to specify the maximum amount of damages it seeks, it undoubtedly seeks relief in excess of \$75,000. Plaintiff’s counsel’s most recent demand was for

\$600,000, approximately \$115,000 claimed as actual damages. Thus, the amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. § 1332.

18. Accordingly, and without waiving Defendant's right to contest any and all claims of damages, the amount in controversy exceeds the \$75,000 threshold for diversity jurisdiction, and this court therefore has jurisdiction over this action. *See* 28 U.S.C. §§ 1332, 1441.

WHEREFORE, Defendant respectfully requests that the State Court Action be removed to this Court.

Dated: October 5, 2011.

Respectfully submitted,

By: /s/ R. Rogge Dunn  
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**ATTORNEYS FOR DEFENDANT  
LEXINGTON INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on the **5<sup>th</sup> day of October, 2011**, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Ruben Alcantara  
10405 Town & Country Way, Suite 105  
Houston, TX 77024

- ☐ **VIA HAND DELIVERY**
- ☐ **VIA FIRST CLASS MAIL**
- ☒ **VIA FAX: 713-344-0867**
- ☐ **VIA E-MAIL:**
- ☐ **VIA CERTIFIED MAIL RRR**

/s/ Gregory M. Clift \_\_\_\_\_  
**GREGORY M. CLIFT**